

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1061 Aquatic Preserves
SPONSOR(S): Massullo
TIED BILLS: **IDEN./SIM. BILLS:** SB 1042

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Melkun	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Aquatic Preserve Act of 1975 was created to ensure that the state-owned submerged lands in areas that have exceptional biological, aesthetic, and scientific value are set aside as aquatic preserves or sanctuaries for the benefit of future generations. Currently, Florida has 41 aquatic preserves, encompassing about 2.2 million acres. Aquatic preserves serve many valuable ecological and economic functions, including providing nurseries for juvenile fish and other aquatic life and providing habitat for shorebirds. Aquatic preserves are also valuable for recreation, providing a host of outdoor activities such as fishing, swimming, and boating.

The bill creates the Nature Coast Aquatic Preserve and specifies the boundaries of the preserve. The bill requires the Board of Trustees of the Internal Improvement Fund (BOT), which is comprised of the Governor and Cabinet, to maintain the preserve and provides limitations on the activities BOT is authorized to approve within the preserve. Specifically, the bill prohibits BOT from approving the further sale, lease, or transfer of sovereign submerged lands within the preserve unless such sale, lease, or transfer is in the public interest and the applicant shows extreme hardship. In addition, BOT may not approve the further dredging or filling of submerged lands except under certain conditions.

The bill prohibits any drilling of wells, excavation for shell or minerals, or erection of structures other than docks within the preserve unless such activity is associated with an activity authorized by the bill. The bill also prohibits BOT from approving the seaward relocation of bulkhead lines or the further establishment of bulkhead lines when a proposed bulkhead line is located at the line of mean high water along the shoreline.

The bill authorizes BOT to enter into certain agreements regarding sovereignty lands or the public or private use of private lands; accept gifts of land within or contiguous to the preserve; conduct restoration and enhancement efforts in the preserve and its tributaries; and stabilize eroding shorelines of the preserve and its tributaries.

The bill requires BOT to adopt rules to provide additional preserve management criteria as necessary in such a manner as not to interfere unreasonably with lawful and traditional public uses of the preserve, such as sport fishing, commercial fishing, boating, and swimming.

The bill specifies that the establishment or management of the preserve may not operate to infringe upon the riparian rights of upland property owners adjacent to or within the preserve.

The bill authorizes the Department of Legal Affairs to bring an action for civil penalties of \$5,000 per day against a person who violates the provisions of the bill or any rules adopted thereunder.

The bill may have an indeterminate fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Submerged Lands

The federal Submerged Lands Act (SLA), enacted in 1953, provides that a state, upon becoming a member of the U.S., acquires title to and ownership of the lands beneath navigable waters within the boundaries of the state¹ and the natural resources within such lands and waters. The state also acquires the right and power to manage, administer, lease, develop, and use such lands and natural resources.² Under the SLA, the U.S. retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs.³

Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high-water line that are beneath navigable fresh water or beneath tidally-influenced waters.⁴ Title to sovereign submerged lands is held by the Board of Trustees of the Internal Improvement Trust Fund (BOT), which is comprised of the Governor and Cabinet.⁵ BOT is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state, including all sovereign submerged lands.⁶

Aquatic Preserves

The Florida Aquatic Preserve Act of 1975⁷ was created to ensure that the state-owned submerged lands in areas that have exceptional biological, aesthetic, and scientific value are set aside as aquatic preserves⁸ or sanctuaries for the benefit of future generations.⁹ The Department of Environmental Protection's (DEP) Office of Resilience and Coastal Protection carries out the Aquatic Preserve Program on behalf of BOT.

Currently, Florida has 41 aquatic preserves, encompassing about 2.2 million acres.¹⁰ All but four of these submerged lands are located along Florida's 8,400 miles of coastline, in the shallow waters of marshes and estuaries. The other four are located inland, near springs and rivers.¹¹ Aquatic preserves serve many valuable ecological and economic functions, including providing nurseries for juvenile fish and other aquatic life and providing habitat for shorebirds. Aquatic preserves are also valuable for recreation, providing a host of outdoor activities such as fishing, swimming, and boating.¹²

¹ 43 U.S.C. §1301 et seq. 43 U.S.C. §1312 designates the seaward boundary of each coastal State as three miles out from its coast line; *U.S. v. Louisiana, et al.*, 363 U.S. 1 (1960), recognizing Florida's seaward boundary into the Gulf of Mexico is three marine leagues (approximately 9-10 miles).

² 43 U.S.C. §1301 and §1311(a).

³ 43 U.S.C. §1314(a).

⁴ Rule 18-21.003(65), F.A.C.

⁵ DEP, *Submerged Land Management*, available at <https://floridadep.gov/lands/bureau-public-land-administration/content/submerged-lands-management> (last visited Jan. 29, 2020).

⁶ Section 253.03, F.S.

⁷ Section 258.35, F.S.

⁸ Section 258.37(1), F.S., defines the term "aquatic preserve" to mean an exceptional area of submerged lands and its associated waters set aside to be maintained in its natural condition.

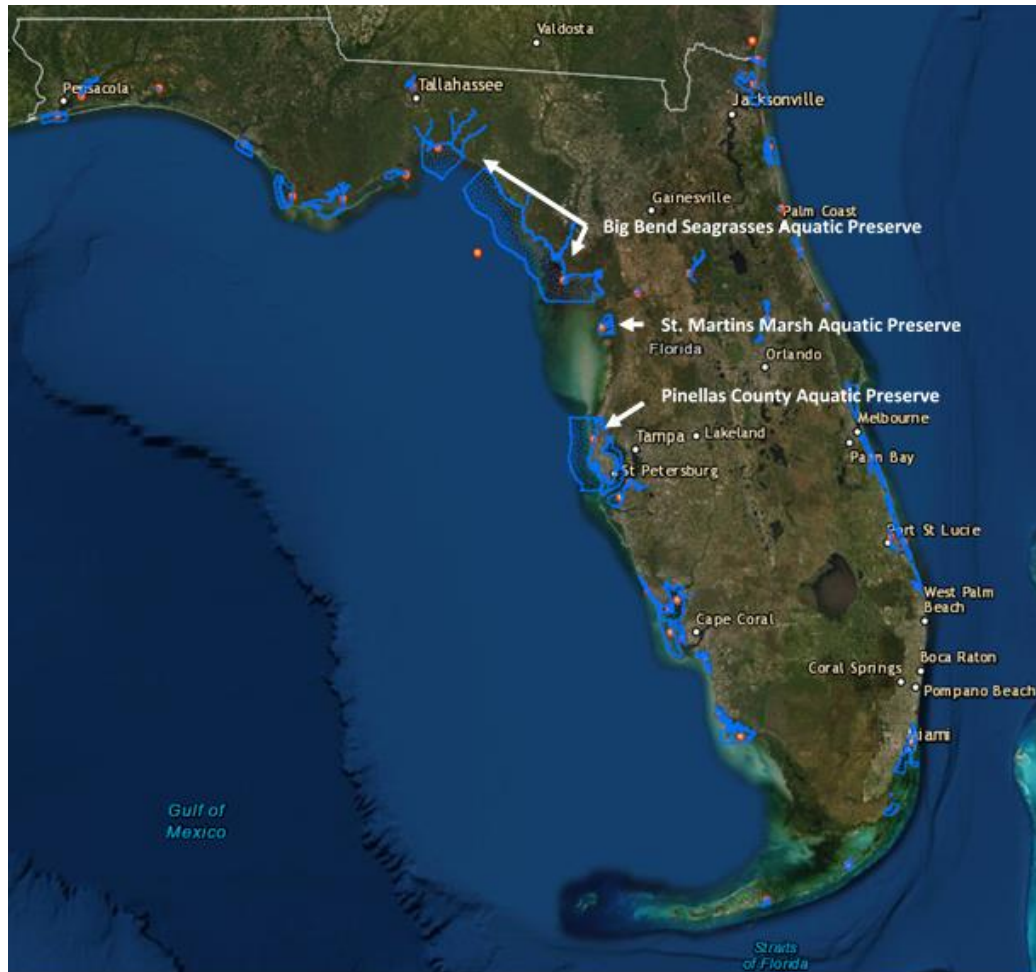
⁹ Section 258.36, F.S.

¹⁰ DEP, *Aquatic Preserve Program*, available at <https://floridadep.gov/rcp/aquatic-preserve> (last visited Jan. 29, 2020).

¹¹ *Id.*

¹² *Id.*

The following figure depicts a map of Florida's aquatic preserves, noting the locations of the Big Bend Seagrasses Aquatic Preserve, the Pinellas County Aquatic Preserve, and the St. Martins Marsh Aquatic Preserve.¹³



Current law restricts certain activities, such as the construction of utility cables and pipes and spoil disposal, in aquatic preserves in order to conserve their unique biological, aesthetic, and scientific value. Section 258.42, F.S., directs BOT to maintain aquatic preserves by prohibiting:

- Further sale, lease, or transfer of sovereign submerged lands unless such sale, lease, or transfer is in the public interest;
- Approval of the waterward relocation or setting of bulkhead lines waterward of the mean high-water line within the preserve unless public road and bridge construction projects have no reasonable alternative and it is shown to not be contrary to the public interest; and
- Further dredging or filling of submerged lands except for certain activities, such as public navigation projects, the creation or maintenance of marinas, or public utility expansion.

The drilling of gas or oil wells and the excavation of minerals are expressly prohibited in aquatic preserves.¹⁴ However, the state is not prohibited from leasing the oil and gas rights of the preserve and permitting drilling from outside the preserve to explore for oil and gas if approved by BOT.

Commercial and residential docking facilities and structures for shore protection are also restricted as to size and location, and waste and effluents may not be discharged into the preserve if they substantially inhibit the accomplishment of the purposes of the Florida Aquatic Preserve Act.¹⁵

¹³ DEP, *Aquatic Preserves of Florida StoryMap Component*, available at <https://fddep.maps.arcgis.com/home/webmap/viewer.html?webmap=4cf441902aef48dfac100d90f37df3f0> (last visited Jan. 29, 2020).

¹⁴ Section 258.42, F.S. The dredging of dead oyster shells is permitted if approved by DEP.

¹⁵ Section 258.42, F.S.

Fees for leases of sovereign submerged lands are significantly higher for leases within aquatic preserves. A rate of two times the existing rate is applied to aquatic preserve leases if 75 percent or more of the lease shoreline and the adjacent 1000 feet on either side of the leased area is in a natural, unbulkheaded, non-seawalled or non-riprapped condition.¹⁶

Nature Coast

"The Nature Coast" is located along Florida's Big Bend region and encompasses 980,000 acres across eight counties (Citrus, Dixie, Hernando, Jefferson, Pasco, Levy, Taylor, and Wakulla) and the City of Dunnellon.¹⁷ This area is a sanctuary to 19 endangered species¹⁸ and has many natural resources, including mangroves, spring fed rivers, limestone outcroppings, sandy beaches, oyster bars, mud flats, and seagrass beds.

Florida Electrical Power Plant Siting Act

The Florida Electrical Power Plant Siting Act (PPSA)¹⁹ is the state's centralized process for licensing large power plants. DEP acts as the lead agency in the certification process, which replaces local and state permits.²⁰ The certification addresses permitting, land use and zoning, and property interests. A certification grants approval for the location of the power plant and its associated facilities, such as a natural gas pipeline supplying the plant's fuel, rail lines for bringing coal to the site, and roadways and electrical transmission lines carrying power to the electrical grid, among others. As it relates to aquatic preserves, the PPSA specifically provides that the certification can exempt the applicant from state statutes or rules protecting aquatic preserves upon a finding that the public interests set forth in the PPSA override the public interest protected by the statute or rule.²¹

Effect of the Bill

The bill creates the Nature Coast Aquatic Preserve and specifies that the preserve consists of the state-owned submerged lands continuous with the southern boundary of the Big Bend Seagrasses Aquatic Preserve and the northern boundary of the Pinellas County Aquatic Preserve.

The bill requires BOT to maintain the aquatic preserve and prohibits BOT from approving the further sale, lease, or transfer of sovereign submerged lands in the preserve unless such sale, lease, or transfer is in the public interest and the applicant shows extreme hardship. In addition, the bill prohibits BOT from approving the further dredging or filling of submerged lands in the preserve except:

- Minimum dredging and spoiling of submerged lands may be authorized for existing public navigation projects, as a public necessity, or for preservation of the preserve;
- Other alterations of the physical conditions of the submerged lands, including the placement of riprap, may be authorized as necessary to enhance the quality and utility of the preserve;
- BOT may authorize minimum dredging and filling of the submerged lands for the construction and maintenance of marinas, piers, or docks and the maintenance of existing attendant navigation channels and access roads only if there is assurance that the project will be constructed and operated in a manner that will not adversely affect the water quality, valuable habitats, and utility of the preserve; and
- BOT may authorize the dredging of submerged lands if BOT determines that such dredging is necessary to eliminate conditions hazardous to the public health or to eliminate stagnant waters, islands, and spoil banks, and that such dredging would enhance the aesthetic and environmental quality, habitats, and utility of the preserve and is clearly in the public interest.

The bill requires BOT to give public notice of any dredging and filling that is approved based on an exception stated above.

¹⁶ Rule 18-21.011(1)(b)5., F.A.C.

¹⁷ Nature Coast Coalition, *History & Area Information*, available at <http://www.naturecoastcoalition.com/nchistory.htm> (last visited Jan. 29, 2020).

¹⁸ *Id.*

¹⁹ Sections 403.501-403.518, F.S.

²⁰ Section 403.504, F.S.

²¹ Section 403.511(2)(b)2., F.S.

The bill prohibits any drilling of wells, excavation for shell or minerals, or erection of structures other than docks within the preserve unless such activity is associated with an activity authorized by the bill.

The bill prohibits BOT from approving the seaward relocation of bulkhead lines or the further establishment of bulkhead lines when a proposed bulkhead line is located at the mean high-water line along the shoreline. The bill further prohibits the construction, replacement, or relocation of a seawall without BOT approval, which may be granted only if riprap construction is used in the seawall.

The bill authorizes BOT, for lands lying within the preserve, to:

- Enter into agreements for and establish lines delineating sovereignty and privately owned lands;
- Exchange, or enter into agreements to exchange, sovereignty lands for privately owned lands;
- Accept gifts of land within or contiguous to the preserve;
- Negotiate or enter into agreements with owners of lands contiguous to public lands for any public or private use of any of such lands;
- Conduct restoration and enhancement efforts in the preserve and its tributaries;
- Stabilize eroding shorelines of the preserve and its tributaries that are contributing to turbidity by planting natural vegetation to the greatest extent feasible and placing riprap, as determined by Pasco, Hernando, and Citrus Counties in conjunction with DEP; and
- Take any action that is convenient or necessary to accomplish these authorized actions.

The bill requires BOT to adopt rules to provide additional preserve management criteria as necessary to accommodate special circumstances and regulation of human activity within the preserve in such a manner as not to interfere unreasonably with lawful and traditional public uses of the preserve, such as sport fishing, commercial fishing, boating, and swimming.

The bill authorizes BOT to approve by formal finding other uses of the preserve or human activity within the preserve.

The bill specifies that the establishment or management of the preserve may not operate to infringe upon the riparian rights of upland property owners adjacent to or within the preserve. The bill further specifies that reasonable improvement for ingress and egress, mosquito control, shore protection, public utility expansion, and similar purposes may be authorized by BOT or DEP, subject to any other applicable laws under the jurisdiction of other agencies. However, before approving any such improvements, BOT or DEP must give public notice.

The bill authorizes the Department of Legal Affairs to bring an action for civil penalties of \$5,000 per day against a person who violates the provisions of the bill or any rules adopted thereunder.

The bill specifies that the preserve is subject to the Florida Electrical Power Plant Siting Act.

B. SECTION DIRECTORY:

Section 1. Creates s. 258.3991, F.S., to establish the Nature Coast Aquatic Preserve.

Section 2. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on state government because the bill allows the Department of Legal Affairs to bring an action for civil penalties of \$5,000 per day for persons who violate provisions relating to the Nature Coast Aquatic Preserve.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on DEP associated with the costs of establishing the aquatic preserve.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on the private sector because sovereign submerged lands leases within the area identified for the Nature Coast Aquatic Preserve would become more expensive.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires BOT to adopt rules to implement the requirements of the Nature Coast Aquatic Preserve.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.